

argues that ILECs do not own 911 networks, but merely provide inputs for them and should not, therefore, be required to report to the Commission regarding the dependability of these networks.<sup>121</sup> US Telecom argues that ILECs do not need to be burdened with additional reporting requirements and regulatory mandates, but rather need flexibility to create redundancies in their networks not mandates requiring them to do so where it is unnecessary.<sup>122</sup> AT&T also asserts that the NENA fails to explain how the Commission could make use of such detailed information in any manner that does not duplicate how 911 service providers already interact with PSAPs and state regulatory authorities.<sup>123</sup> AT&T and US Telecom assert that requiring the unnecessary further dissemination of this information could have serious adverse consequences for service providers, for whom those proprietary data have substantial competitive value, and for the general public if that information is compromised and comes into possession of persons and groups with criminal intentions.<sup>124</sup>

96. We agree that the Commission should require the analysis of 911 and E911 networks and the submission of reports regarding the status of these networks. Although NENA's proposal appears to be limited to 911 SSPs, which are typically incumbent local exchange carriers (ILECs), we believe that, with the exceptions described below, this requirement should apply all LECs, including ILECs and CLECs, CMRS providers required to comply with the wireless 911 rules<sup>125</sup> and interconnected Voice over Internet Protocol (VoIP) service providers.<sup>126</sup> It is critical that Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service. Therefore, we will require LECs, including both ILECs and CLECs, CMRS providers required to comply with the wireless 911 rules and interconnected VoIP service providers analyze and provide detailed reports on the redundancy, resiliency, and dependability of their 911 and E911 networks and systems. Where relevant, the reports should include steps the service provider intends to take to ensure diversity and dependability in the network and/or system, including any plans they have to migrate their network to a next generation IP-based E911 platform. This requirement will serve the public interest and further the Commission's statutory mandate to promote the safety of life and property through the use of wire and radio communication.<sup>127</sup>

97. We are mindful that this requirement may cause a financial burden to certain small carriers. Accordingly, we will not impose this reporting requirement on LECs, including ILECs and CLECs, that meet the definition of a Class B company set forth in Section 32.11(b)(2) of the Commission's rules.<sup>128</sup> We will also not impose this reporting requirement on Tier III CMRS carriers.<sup>129</sup>

<sup>121</sup> US Telecom Reply Comments at 8-9.

<sup>122</sup> US Telecom Reply Comments at 8-9.

<sup>123</sup> In support of this assertion, AT&T cites Public Utility Commission of Texas Rules, Section 26.433, available at [www.puc.state.tx.us/rules/subrules/telecom/26.433/26.433.pdf](http://www.puc.state.tx.us/rules/subrules/telecom/26.433/26.433.pdf).

<sup>124</sup> AT&T Reply Comments at 3-4; US Telecom Reply Comments at 8-9.

<sup>125</sup> See 47 C.F.R. § 20.18.

<sup>126</sup> "Interconnected VoIP services" are services that (1) enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from and terminate calls to the public switched telephone network. See *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 06-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58 ¶ 24 (2005), *aff'd*, *Nuvio Corp v. FCC*, 473 F.3d 302 (D.C. Cir. 2006) (*VoIP 911 Order*).

<sup>127</sup> See 47 U.S.C. § 151.

<sup>128</sup> Section 32.11 of the Commission's rules defines Class B companies as "[c]ompanies having annual revenues from regulated telecommunications operations that are less than the indexed revenue threshold." 47 C.F.R. § 32.11 (b)(2). The Wireline Competition Bureau recently announced that the 2006 revenue threshold for Class A to Class B companies is \$134 million. *Annual Adjustment of Revenue Thresholds*, Public Notice, DA 07-1706 (WCB, April

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Interconnected VoIP service providers will be exempt from this requirement if their annual revenues fall below the revenue threshold established pursuant to Section 32.11 of the Commission's rules. NENA recommends that these reports be shared with "leading public safety organizations." Although we believe there is some benefit to sharing these reports with certain public safety organizations, we also understand that these reports will likely contain competitive and other information that should be accorded confidential treatment under our rules. To balance these concerns, we will share these reports with NENA, APCO, and The National Association of State 9-1-1 Administrators, the public safety organizations that previously have been provided copies of 911-related reports, but only pursuant to a protective order consistent with the model protective order previously adopted by the Commission.<sup>130</sup> We delegate authority to PSHSB to issue such protective orders.

98. AT&T and US Telecom argue that this should not be the duty of SSPs which are typically ILECs, suggesting that PSAPs are better situated to perform such an analysis. PSAPs know whether they have alternative facilities into their buildings and whether they have backup/alternative PSAP sites. However, carriers, not PSAPs, know about the selective routers, the routing between selective routers and the central offices from which customers may call, and the diversity in the interoffice facilities between the selective router and the central office serving the PSAP. PSAPs should know whether they ordered facility diversity, but they do not have insight regarding how, or even if, this was provisioned. US Telecom also argued that ILECs should not be subject to mandates requiring them to create redundancies in their networks; however, the rule we adopt requires only an analysis and report, it does not require carriers to create additional network redundancies.

99. Accordingly, pursuant to our authority under Section 403 of the Communications Act, as amended,<sup>131</sup> we will require LECs, CMRS providers required to comply with the wireless 911 rules and interconnected VoIP service providers, except those exempted above, to conduct an analysis of the resiliency and reliability of their 911 networks or systems and to submit a report to the Commission. We delegate to PSHSB the authority to implement and activate a process through which these reports will be submitted, including the authority to establish the specific data that will be required from each category of communications provider. We also direct PSHSB to make efforts to ensure that carriers subject to state regulations requiring the reporting of similar information are afforded the opportunity to meet this requirement by submitting the state report. The report will be due 120 days from the date that the Commission or its staff announces activation of the 911 network and system reporting process.

100. We also note that NRIC VII developed best practices that could address this issue. Accordingly, we direct PSHSB to continue to encourage industry to implement NRIC's best practices in this area, to continue to encourage industry to develop best practices in this area specific to their locale, and to continue to work to see that such recommendations, and any resulting adopted best practices, are made available on the Commission's website.

101. *Two-Way Paging Initiative.* Commenters recommended that the Commission permit the

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12, 2007). Although Section 32.11, by its terms, applies only to ILECs, we are applying the same revenue categories to CLECs for the purpose of the exception to this requirement.

<sup>129</sup> Tier III carriers are non-nationwide CMRS providers with no more than 500,000 subscribers at the end of 2001. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers*, CC Docket No. 97-102, Order to Stay, 17 FCC Rcd 14841, 14848 ¶ 22 (2002).

<sup>130</sup> See *In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, GC Docket No. 96-55, 13 FCC Rcd 24816 (1998).

<sup>131</sup> 47 U.S.C. § 403.

use of 900 MHz B/ILT pool of spectrum for two-way paging systems either owned by public safety users or dedicated to the provision of emergency communications.<sup>132</sup> We direct PSHSB, in coordination with WTB, to consider this issue and to determine what action, if any, should be implemented.

102. *McVey Petition for Rulemaking.* In his comments, W. Lee McVey requests that the Commission initiate a rulemaking to create a new radio service in the 148-150 MHz band “to facilitate interoperability between different first responders during and following a national emergency.”<sup>133</sup> We note that the 148-149.9 band is allocated on a primary basis for federal Fixed, Mobile and Mobile Satellite (Earth-to-Space) service and the 149-150.05 MHz segment is allocated on a co-primary basis for federal and non-federal Mobile Satellite (Earth-to-space) and Radio navigation Satellite Services, and that the petition does not address this use nor does it explain what rules would be necessary to govern access to this spectrum. Given the potential impact of McVey’s proposal to spectrum allocated for federal use, we direct PSHSB, together with OET, to seek feedback from NTIA on this petition. Upon receiving such feedback, we direct PSHSB and OET to make a determination on the appropriate action to be taken on this petition.

#### **D. Emergency Communications to the Public**

103. *Revitalize and Publicize the Emergency Alert System.* The Katrina Panel suggests a number of recommendations to revitalize and publicize the existing Emergency Alert System (“EAS”). To facilitate and complement the use of the existing EAS, the Katrina Panel recommends that the Commission should: (a) educate state and local officials about EAS, its benefits, and how it can be best utilized; (b) develop a program for educating the public about the EAS and promote community awareness of potential mechanisms for accessing those alerts sent during power outages or broadcast transmission failures; (c) move expeditiously to complete its proceeding to explore the technical and financial viability of expanding the EAS to other technologies, such as wireless services and the Internet, recognizing that changes to communications networks and equipment take time to implement; (d) consistent with proposed legislation, work with Congress and other appropriate federal departments and agencies to explore the technical and financial viability of establishing a comprehensive national warning system that complements existing systems and allows local officials to increase the penetration of warnings to the public as well as target, when necessary, alerts to a particular area; (e) work with the DHS and other appropriate federal agencies on pilot programs that would allow more immediate evaluation and testing of new notification technologies; and (f) work with the Department of Commerce to expand the distribution of certain critical non-weather emergency warnings over National Oceanic and Atmospheric Administration (NOAA) weather radios to supplement the EAS.<sup>134</sup>

104. We agree that we should encourage state, tribal and local governments to use EAS as a mechanism to deliver emergency alerts. Accordingly, we direct PSHSB to engage in outreach efforts to educate state, tribal and local governments about the EAS. In addition, we direct PSHSB to take steps to educate the public about EAS. We also note that PSHSB has coordinated with DHS on EAS issues, including issues related to the development of a state-of-the-art public alert and warning system. We direct PSHSB to continue those efforts.

105. Finally, on the issue of expanding the scope of EAS to include new technologies, as the Katrina Panel acknowledges, this issue is already the subject of our ongoing EAS rulemaking proceeding.<sup>135</sup> In addition, pursuant to the recently enacted WARN Act,<sup>136</sup> the Commission established

<sup>132</sup> See e.g., AAPC Comments.

<sup>133</sup> McVey Petition at 22.

<sup>134</sup> Katrina Panel Report at 40.

<sup>135</sup> Review of the Emergency Alert System, First Report and Order and Further Notice of Proposed Rulemaking, EB Docket No. 04-296, 20 FCC Rcd 18625 (2005). We note that, in a separate action on May 31, 2007, the

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an advisory committee -- the Commercial Mobile Service Alert Advisory Committee -- to develop and recommend technical standards and protocols by which commercial mobile service (CMS) providers may voluntarily transmit emergency alerts. The Committee has a diverse membership, including over forty representatives from the wireless and broadcast industries, public safety, equipment manufacturers, organizations representing people with disabilities and the elderly, FEMA and NOAA. Thus far, the Committee has held three full Committee meetings and a number of informal working group meetings. The Commission expects that the Committee will meet its statutory deadline of submitting recommendations to the Commission by October 12, 2007.

106. Ensuring that People with Disabilities and Non-English Speaking Persons Receive Alerts. The Katrina Panel recommended that the Commission promptly find a mechanism to resolve technical and financial hurdles in the EAS system to ensure that non-English speaking people or people with disabilities have access to public warnings, if readily achievable.<sup>137</sup> The Panel also recommended that the Commission work with trade associations and the disability community to create and publicize best practices for serving persons with disabilities and non-English-speaking Americans and encourage state and local government agencies that provide emergency information to take steps to make this information accessible to persons with disabilities and non-English speaking Americans.<sup>138</sup>

107. We note that the issue of making EAS alerts accessible to people with disabilities and to those who do not speak English is already the subject of the EAS rulemaking proceeding.<sup>139</sup> Moreover, the Commercial Mobile Service Alert Advisory Committee will consider these issues in the context of wireless carriers' participation in emergency alerts. On the broader issue of ensuring that emergency information reaches people with disabilities and non-English speaking Americans, we direct PSHSB, along with Consumer & Government Affairs Bureau (CGB) as appropriate, to work with the industry, state, tribal and local governments and organizations representing people with disability and non-English speaking persons on these issues.<sup>140</sup>

108. Ensuring Consistent and Reliable Emergency Information Through a Consolidated and Coordinated Public Information Program. The Katrina Panel recommended that public information functions should be coordinated and integrated across jurisdictions and across functional agencies, among federal state, local and tribal partners, and with private sector and non-governmental organizations.<sup>141</sup> The Panel recommended that the Commission work with involved parties to facilitate the integration of media representatives into the development of disaster communications plans (Emergency Support Function #2).<sup>142</sup> The Panel also urged the designation of a public information officer at each Emergency

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Commission adopted a Second Report and Order and Further Notice of Proposed Rulemaking in the EAS proceeding that addresses some of the Katrina Panel's recommendations. See FCC Takes Action To Further Strengthen Nation's Emergency Alert System, *News Release*, (May 31, 2007) ("*EAS News Release*").

<sup>136</sup> The Warn Act establishes a framework by which commercial mobile service providers may voluntarily transmit emergency alerts.

<sup>137</sup> *Katrina Panel Report* at 41.

<sup>138</sup> *Id.*

<sup>139</sup> We note that, in the Further Notice of Proposed Rulemaking adopted in the EAS proceeding on May 31, 2007, the Commission sought further comment on these issues. See *EAS News Release*, *supra*.

<sup>140</sup> In addition, in the EAS Second Report and Order, the Commission directed PSHSB to convene a meeting, or a series of meetings, as soon as possible to address providing emergency information to non-English speakers. See *EAS News Release*, *supra*.

<sup>141</sup> *Katrina Panel Report* at 41.

<sup>142</sup> *Id.*

Operations Center to handle media and public inquiries, emergency public information and warning, and other functions. The Panel advocates the formation of a Joint Information Center ("JIC") during large scale disasters.<sup>143</sup> The JIC would collocate representatives from federal, regional, state, local and/or tribal EOCs responsible for primary incident coordination responsibilities. The JIC would provide a mechanism to integrate public information activities from various jurisdictions and organizations and would include media operations.

109. We believe this issue is thoroughly addressed by the National Response Plan under Emergency Support Function #15—External Affairs and the Public Affairs Support Annex. ESF #15 ensures that sufficient federal assets are deployed to the field during a potential or actual Incident of National Significance to provide accurate, coordinated, and timely information to government, media, the private sector and the local populace. This provides the resource support and mechanisms to implement the NRP Incident Communications Emergency Policy and Procedures described in the NRP Public Affairs Support Annex. The NRP Public Support Annex describes the interagency policies and procedures used to rapidly mobilize federal assets to prepare and deliver coordinated and sustained messages to the public in response to Incidents of National significance and other major domestic emergencies. In addition, the NRP Public Affairs Support Annex specifically addresses the formation of JICs.

110. The Katrina Panel recommended that the Commission should work with federal, state, and local agencies to ensure consistent and reliable emergency information through a consolidated and coordinated public information program. We note that state, tribal and local officials play a key role in forming messages as they are sent to the public. Nonetheless, we direct PSHSB to continue to work with DHS and state, tribal and local governments on the consolidation and coordination of public information as part of its supporting role under the NRP's ESF #15 and the Public Affairs Annex.<sup>144</sup>

#### E. Other Recommendations

111. Amateur Initiatives. Several amateur radio operators recommended changes to Part 97 of the Commission's rules which govern amateur radio. Many of the changes have already been implemented and thus require no further action. For example, the Commission recently eliminated Morse Code proficiency as a license qualification requirement,<sup>145</sup> an action supported by several commenters in this proceeding.<sup>146</sup> The Commission also previously decided to phase out RACES station licenses,<sup>147</sup> making proposed changes to rules relevant to these licenses moot. Finally, the Commission previously clarified that Part 97 does not prohibit amateur radio operators who are emergency personnel engaged in

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<sup>143</sup> *Id.* at 41-42.

<sup>144</sup> The Commission is a Support Agency for the NRP's ESF #2 which addresses communications. ESF #2 ensures the provision of Federal communications support to Federal, State, local, tribal and private-sector response efforts during an Incident of National Significance. This Emergency Support Function supplements the provisions of the National Plan for Telecommunications Support in On-War-time Emergencies. Coordination of public information is not a function assigned to ESF #2.

<sup>145</sup> Amendment of Part 97 of the Commission's Rules to Implement WRC-03 Regulations Applicable to Requirements for Operator Licenses in the Amateur Radio Service, *Report and Order and Order on Reconsideration*, WT Docket No. 05-235, FCC 06-178 (released December 19, 2006).

<sup>146</sup> See e.g., Cline Comments at 1; Creal Comments, at 1; Walz Comments, at 1; Flynn Comments at 1; Wade Comments at 1-2; Sewell Comment at 1.

<sup>147</sup> 1998 Biennial Regulatory Review — Amendment of Part 97 of the Commission's Amateur Service Rules, *Report and Order*, WT Docket No. 98-143, 15 FCC Rcd 315, 351, ¶63 (1999).

disaster relief from using their amateur radio bands while in a paid duty status.<sup>148</sup> We also note that several recommendations made by amateur radio operators remain pending before the Commission and, accordingly, we take no action on those in this proceeding.<sup>149</sup> We do note that the amateur radio community played an important role in the aftermath of Hurricane Katrina and other disasters. Accordingly, we order PSHSB to include the amateur radio community in its outreach efforts.<sup>150</sup>

112. Low Power Broadcast Service Initiatives. Prometheus Radio Project and Amherst Alliance submitted a number of recommendations regarding the Low Power FM service as well as other low power broadcast services. Specifically, these commenters recommended that the Commission: (1) remind Congress that it has previously recommended that the statutory restrictions on adjacent channel spacing of Low Power FM stations should be repealed; (2) open a filing window for 10 watt LPFM license applications; (3) establish 250 watt LPFM stations; and (4) establish Low Power AM stations; and (5) resolve the LPFM rulemaking proceeding.<sup>151</sup> We will refer these issues to the Media Bureau for handling as appropriate.

113. Modification of "Substantial Service" Policies for NPCS Channels. The American Association of Paging Carriers (AAPC) asserts that the Commission should "modify its 'substantial service' policies governing Part 24 NPCS channels so that licensees leasing, disaggregating or partitioning NPCS spectrum for use by two-way paging systems for emergency communications, including leasing, disaggregating or partitioning spectrum for 'back haul' channels that can be paired with traditional 929/931 MHz paging channels, also will be deemed to be providing 'substantial service' on the spectrum retained by the NPCS licensee."<sup>152</sup> Because this issue relates to general construction policy, we will refer this issue to the Wireless Telecommunications Bureau for appropriate handling.

114. Designation of 700 MHz Spectrum for Critical Infrastructure. Some commenters recommend that the Commission designate a portion of the 700 MHz band for use by critical infrastructure industry use.<sup>153</sup> We will address this issue in the context of our 700 MHz proceedings.

115. CALEA Exemption for Temporary Ad Hoc Networks. Champaign Urbana Wireless Network *et al* asks that the Commission clarify that volunteers who build ad hoc networks in response to an emergency need not comply with CALEA. They state that, in response to Hurricane Katrina, volunteers created numerous wireless networks to provide needed Internet connectivity for Red Cross shelters and others in areas where Katrina destroyed or substantially degraded existing infrastructure. On completing construction of these ad hoc networks, the volunteers turned these networks over to local

<sup>148</sup> Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Services, *Report and Order*, WT Docket No. 04-140, FCC 06-149 at para. 52 (released October 10, 2006).

<sup>149</sup> For example, we note that some commenters requested that the Commission adopt rules overriding bands of antennas used by amateur radio operators who are trained as emergency communicators. *See, e.g.,* Amherst Alliance Reply Comments at 8-11. We note that a petition for rulemaking has been filed separately on this issue and we will address this issue in the context of that filing. Other commenters raised issues that are part of the Commission's pending consideration of a Petition for Rulemaking filed by ARRL (RM 11306). Those issues will be addressed in that proceeding.

<sup>150</sup> We decline to take regulatory steps to protect the communications infrastructure from Electromagnetic Pulse ("EMP") attacks as recommended by amateur radio operators Nicholas Leggett and Donald Schellhardt. *See Leggett, et al. Comments*, at 1-12. The Commission has previously addressed and rejected such requests by Mr. Leggett and Mr. Schellhardt. Other government agencies, such as DHS and the National Institute of Standards and Technology are examining issues relating to EMP threats.

<sup>151</sup> *See e.g.,* Prometheus Radio Comments at 12-13; Amherst Alliance Reply Comments at 2-6.

<sup>152</sup> AAPC Comments at ii.

<sup>153</sup> UTC Reply Comments at 6.

operators and move on to help others.

116. Champaign Urbana *et al* states that many of these ad hoc networks remained in operation for months and may still remain in operation today. They state that volunteers who generally did not maintain contact or provide any services for these networks once they turn them over to local operators. They state that these volunteers are not telecommunications carriers to whom CALEA generally applies and that these volunteers do not provide these services for hire. In addition, they state that these volunteers do not fall under the “substantial replacement provision” of the Act.

117. They request that the Commission establish a blanket waiver for *ad hoc* wireless networks created in response to a state of emergency; and that any liability that might arise for failure to comply with CALEA if the networks remain in operation after the emergency would not lie with those who created the network so long as they turned control over the network to others. To the extent the Commission determines that these volunteers are subject to CALEA, Champaign Urbana *et al* requests that the Commission provide a general waiver pursuant to its authority to exempt any “class or category of telecommunications carrier.”

118. We do not have sufficient information in the record to justify grant of a blanket waiver as Champaign Urbana suggests. First it is not clear whether Champaign Urbana’s request is for a blanket waiver of ad hoc temporary networks in all cases of emergencies, including those involving terrorist attacks. If so, such a waiver could actually impede law enforcement and thus hinder the purposes of CALEA. Moreover, we note that CALEA exemptions may only be granted after formal consultation with the U.S. Attorney General and that the Federal Bureau of Investigation (which formally has been designated by the Attorney General to handle CALEA obligations) has previously opposed granting blanket CALEA exemptions. For these reasons, we decline to issue a blanket waiver for these types of networks. Rather, we think the appropriate approach would be to review requests for exemptions of these types of networks (and the volunteers who construct them) on a case-by-case basis.

119. Closed Captioning and Telecommunications Relay Service Issues. Telecommunications for the Deaf and Hard of Hearing (TDI) recommends that: (1) broadcasters establish contracts or cooperative agreements among captioning providers to ensure that broadcasts can be captioned in the event of emergencies regardless of the emergency’s location;<sup>154</sup> (2) captioning services personnel should be designated as essential personnel;<sup>155</sup> (3) the Commission require all Telecommunications Relay Service (“TRS”) providers to have back-up power ready to operate for a minimum of 72 hours;<sup>156</sup> (4) the Commission should require that all TRS providers have contingency plans for transfer of calls from TRS centers that may be unable to operate due to catastrophic damage or overwhelming volume of calls from other centers;<sup>157</sup> and (5) all TRS personnel should be deemed essential personnel during emergencies.<sup>158</sup>

120. We direct CGB to consider these issues in an appropriate proceeding. In this regard, we note that, on December 29, 2006, the Commission released a Public Notice that provides steps that video

<sup>154</sup> Telecommunications for the Deaf and Hard of Hearing, Incorporated; American Association of People with Disabilities; Association of Late-Deafened Adults; California Coalition of Agencies Serving the Deaf and Hard of Hearing; Deaf & Hard of Hearing Consumer Advocacy Network; and National Association of the Deaf Reply Comments (“TDI Reply Comments”) at 7.

<sup>155</sup> TDI Reply Comments at 14.

<sup>156</sup> The rules currently require that most TRS providers operate, 24 hours a day, seven days a week and that they have redundancy features similar to those in central offices, including uninterruptible power for emergency use. See 47 C.F.R. § 64.604(b)(4)(i-ii).

<sup>157</sup> TDI Comments at 14.

<sup>158</sup> *Id.*

programming distributors may take to obtain closed captioning services quickly in the event of an emergency.<sup>159</sup> With respect to TDI items (2) and (5), we note that the FCC has no jurisdiction over who is declared an “essential service provider,” nonetheless we will direct PSHSB to work with DHS on this issue.

121. The American Association of People with Disabilities (AAPD) suggests that the Commission consider encouraging IP Relay and Video Relay Service (VRS) providers to develop solutions for handling emergency calls through TRS.<sup>160</sup> This issue was raised in the November 30, 2005 VRS 9-1-1 NPRM,<sup>161</sup> has been the subject of an E9-1-1 Disability Access Summit held at the Commission on November 15, 2006, and is pending before the Commission. CGB’s Disability Rights Office and PSHSB will continue to work with the disability community and Internet-based TRS providers on these issues.<sup>162</sup>

#### IV. PROCEDURAL MATTERS

##### A. Final Regulatory Flexibility Act Analysis

122. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis of the possible impact of the rule changes contained in this Order on small entities. The Final Regulatory Flexibility Act analysis is set forth in Appendix C, *infra*. The Commission’s Consumer & Government Affairs Bureau, Reference Information Center, will send a copy of this Order, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

##### B. Final Paperwork Reduction Act of 1995 Analysis

123. This Order contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, the Office of Management and Budget (“OMB”) and other Federal agencies to comment on the information collection requirements contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days from date of publication of the Order in the Federal Register. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” In this present document, we have assessed the effects of requiring the analysis of 911 and E911 networks and the submission of a report on the resiliency and reliability of those networks, by LECs, CMRS providers required to comply with the wireless 911 rules, and interconnected VoIP service providers. We have specifically exempt LECs that meet the definition of a Class B company set forth in Section 32.11(b)(2) of our rules,<sup>163</sup> Tier III CMRS carriers, and interconnected VoIP service providers

<sup>159</sup> See *Obligation Of Video Programming Distributors To Make Emergency Information Accessible To Persons With Hearing Disabilities Using Closed Captioning*, DA 06-2627 (Public Notice) (released December 29, 2006).

<sup>160</sup> AAPD Comments at 2-3.

<sup>161</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, (Notice of Proposed Rulemaking), CG Docket No. 03-123, 20 FCC Rcd 19476 (2005).

<sup>162</sup> Citing Section 255 of the Communications Act, AAPD urges the Commission to consider requiring captioning for PDAs, cell phones and other “converged” devices that have the ability to display text along with video. AAPD Comments at 2-3. Section 255, however, is restricted to “telecommunications service and equipment” devices, and not equipment such as televisions, iPods, etc. We also believe that extension of the closed captioning requirements to the types of devices mentioned by AAPD would require an amendment to the Television Decoder Circuitry Act of 1990, or other legislation by Congress.

<sup>163</sup> See *supra* n.102 and n.128.



with annual revenues below the revenue threshold established pursuant to Section 32.11 of our rules from these requirements.<sup>164</sup> We find that this imposes minimal regulation on small entities to the extent consistent with our goal of advancing our public safety mission.

### C. Congressional Review Act Analysis

124. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

### D. Alternative Formats

125. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or calling the Consumer and Governmental Affairs Bureau at (202) 418-0530, TTY (202) 418-0432.

## V. ORDERING CLAUSES

126. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 1, 4(i)-(k), 4(o), 5(c), 201, 214(a), 218, 219, 271, 272, 301, 303(g), 303(j), 303(r), 332, 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(k), 154(o), 155(c), 201, 214(a), 218, 219, 271, 272, 301, 303(g), 303(j), 303(r), 332, 403, 541(b)(3), and 541(d), that this Order in EB Docket No. 06-119 and WC Docket No. 06-63 IS ADOPTED and that the Commission's Rules are amended as set forth in Appendix B. The rules adopted in this Order shall become effective 30 days after publication in the Federal Register, except that the new information collection requirement contained in Appendix B will not become effective prior to OMB approval. The reports on the redundancy, resiliency and reliability of 911 and E911 networks are due 120 days from the date that the Commission or its staff announces activation of the OMB-approved reporting process. The remainder of this Order shall become effective upon the release date of this Order, except as noted in ¶ 128.

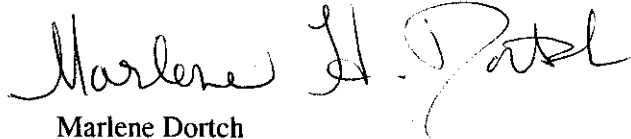
127. IT IS FURTHER ORDERED that the Commission's Public Safety and Homeland Security Bureau, Consumer and Governmental Affairs Bureau and Office of Engineering and Technology take action as directed in this Order. The Commission's Public Safety and Homeland Security Bureau shall report to the Commission on its efforts three months from the date of release of this Order and nine months from the date of release of this Order.

128. IT IS FURTHER ORDERED that the Special Temporary Authority and waiver of Section 272 of the Act and its implementing rules to allow AT&T, Verizon and Qwest to share non-public, Bell Operating Company (BOC) network information with their Section 272 and other affiliates, as necessary to engage in integrated disaster recovery planning, IS EXTENDED to a one year period ending April 20, 2008 for AT&T<sup>165</sup> and to June 9, 2008 for Verizon and Qwest, effective on the date of release of this Order.

<sup>164</sup> See *supra* n.103 and n.129.

<sup>165</sup> AT&T's relief was originally scheduled to expire on April 20, 2007, but was extended by PSHSB to April 27, 2007. In light of this, we grant AT&T's extension *nunc pro tunc* back to April 27, 2007.

129. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**FEDERAL COMMUNICATIONS COMMISSION**A handwritten signature in black ink, appearing to read "Marlene H. Dortch", is written over the printed name.

Marlene Dortch

Secretary

**APPENDIX A****List of Commenters****Comments in EB Docket No. 06-119**Comments

1. Agile Communications Group
2. Alabama Broadcasters Association, Florida Association of Broadcasters
3. Louisiana Association of Broadcasters and the Mississippi Association of Broadcasters
4. Alliance for Telecommunications Industry Solutions
5. American Association of Paging Carriers
6. American Association of People with Disabilities<sup>1</sup>
7. American Association of State Highway and Transportation Officials
8. American Petroleum Institute
9. ARINC
10. Association of Public-Safety Communications Officials – International, Inc.
11. Association of Public Television Stations
12. AT&T Inc.
13. Batteiger, Allan R.
14. Bechtel National Inc., Federal Telecoms
15. BellSouth Corporation
16. California Department of Transportation
17. Candell, Michael C.
18. Champaign Urbana Wireless Network, Texas ISP Association, Association for Community Networking & Acorn Active Media
19. Chandler, Charles
20. Cingular Wireless LLC
21. Cisco Systems, Inc.
22. Cleco Corporation
23. Cline, Michael
24. Comcare Emergency Response Alliance
25. Comcast Corporation
26. Consumer Electronics Association
27. Cox, Mickey D.
28. Creal, Robert R.
29. CTIA – The Wireless Association
30. Cyren Call Communications Corporation
31. Delaware Emergency Management Agency
32. Dye, Brad and Mercer, Ron
33. Enhanced 911 Program of the State of Washington
34. Erickson, Ronald Dale
35. Finnstrom, Rick
36. First Response Coalition
37. Flynn, James C. Jr.
38. Francisco, Albert K.
39. Gorham, Gold, Greenwich and Associates, LLC
40. Hamel, Patrick E.

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<sup>11</sup> These comments were filed on August 17, 2006, ten days after the August 7, 2006 comment due date.

41. Hampton, Rickey L.<sup>2</sup>
42. Hams for Action
43. Headrick, Loyd C.
44. Hejl, Robert
45. Holmes, Adolph
46. Hunt, J. Kevin, Esq. (filed jointly with the Oregon City Disaster Services)
47. Independent Spanish Broadcasters Association, Office of Communications of the United Church of Church and the Minority Media and Telecommunications Council
48. Inmarsat Ventures Limited
49. International Association of Fire Chiefs, Inc. and the International Municipal Signal Association
50. Interstate Wireless, Inc.
51. Intrado, Inc.
52. Iridium Satellite LLC
53. Isaachsen, Alan
54. Keown, Malcolm P.
55. Leggett, Nicholas E and Shellhardt, Donald J.
56. Lowenthal, Joseph A.
57. Lucent Technologies, Inc.
58. M2Z Networks, Inc.
59. M/A-Com, Inc.
60. Maddocks, Hugh C.
61. Martin, Richard T.
62. McVey, W. Lee
63. Meinrath, Sascha D.
64. Merritt, Harold F.
65. Miller, Jeffrey
66. Mississippi Authority for Educational Television
67. Mobile Satellite Ventures Subsidiary LLC
68. Motorola, Inc.
69. Murray, Gerald W.
70. National Association of Broadcasters
71. National Association of State EMS Officials
72. National Cable & Telecommunications Association, Louisiana Cable & Telecommunications Association and the Mississippi Cable Telecommunications Association
73. National Emergency Number Association
74. National Public Safety Telecommunications Council
75. National Rural Electric Cooperative Association
76. National Sheriffs' Association
77. New York State Department of Public Service
78. Northeast Utilities
79. NTI Group, Inc.
80. PacketHop, Inc.
81. Plasters, Paul
82. Prometheus Radio Project
83. Public Service Commission of the State of Missouri
84. Puerto Rico Telephone Company, Inc.
85. Pulver.com/Evslin Consulting
86. Qwest Services Corporation

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<sup>2</sup> These comments were filed on August 8, 2006, one day after the August 7, 2006 comment due date.

87. Randall, James L.
88. Redden, Clay
89. Rural Cellular Association
90. Russell, James
91. Sastry, Ambatipudi
92. Satellite Industry Association
93. Schellhardt, Don
94. Schumpert, Doug
95. Scott, Benson
96. Sewell, Alvain Dale
97. Sherman, Jared
98. Smith, Steven L.
99. Society for the Preservation of Amateur Radio
100. SouthernLINC Wireless
101. Sprint Nextel Corporation
102. SquareLoop, Inc.
103. St. Tammany Parish Communications District I
104. St. Tammany Parish Office of the President
105. Staats, Wayne P.
106. Tennessee Statewide Interoperability Executive
107. Texas Commission on State Emergency Communications and the Texas 9-1-1 Alliance
108. Tropos Networks
109. United States Telecom Association
110. Unrath, John
111. USA Mobility, Inc.
112. U.S. Department of Homeland Security
113. USMSS, Inc.
114. Verizon
115. Wade, Martin David
116. Walz, Danial L.
117. Whitman, Alan
118. Wooddell, Jim
119. Young, Charles<sup>3</sup>
120. Young, Stan

#### Reply Comments

1. Alabama Power Company, Georgia Power Company, Gulf
2. Power Company, Mississippi Power Company, SouthernLINC Wireless and Southern Company Services
3. Amherst Alliance
4. AT&T, Inc.
5. Altaphon, Inc.<sup>4</sup>
6. BellSouth Corporation
7. Consumers Energy Company and Excel Energy Services, Inc.
8. Cox Enterprises, Inc.
9. Cyren Call Communications Corporation

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<sup>3</sup> These comments were filed one day after the August 7, 2006 initial comment deadline.

<sup>4</sup> These reply comments were filed on August 23, 2006, two days following the August 21, 2006 reply comment filing deadline.

10. Enterprise Wireless Alliance
11. GlobalStar, Inc.
12. Gorham, Gold, Greenwich & Associates, LLC
13. Hatch, Larry
14. Martin, Richard T.
15. M/A Com, Inc.<sup>5</sup>
16. McVey, W. Lee
17. Named State Broadcasters Association<sup>6</sup>
18. Space Data Corporation
19. TDS Telecommunications Corp.
20. Telecommunications for the Deaf and Hard of Hearing, Inc.,  
American Association of People with Disabilities, Association of  
Late-Deafened Adults; California Coalition of Agencies Serving the Deaf  
And Hard of Hearing; Deaf & Hard of Hearing Consumer Advocacy Network and  
National Association of the Deaf
21. T-Mobile USA, Inc.
22. Union Telephone Company
23. United States Telecom Association
24. United Telecom Council
25. Verizon

#### Ex Parte

1. Agile Communications Group
2. Alliance for Telecommunications Industry Solutions
3. AT&T, Inc.<sup>7</sup>
4. Austin Wireless/Campaign-Urbana Wireless Network/Media Access Project
5. CTIA – The Wireless Association
6. Minnesota Broadcasters Association and Missouri Broadcasters Association
7. National Emergency Number Association
8. National Telecommunications and Information Administration
9. NTI Group<sup>8</sup>

<sup>5</sup> These reply comments were filed on August 22, 2006, one day following the August 21, 2006 reply comment filing deadline.

<sup>6</sup> Commenters jointly expressing comments as the Named State Broadcasters Association: Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Dakota Broadcasters Association, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Washington State Association of Broadcasters, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters. In an August 28, 2006 letter, the Minnesota Broadcasters Association and Missouri Broadcasters Association expresses their support of the Reply Comments of the Named State Broadcasters Association and asks the Commission to add their names to the Comments of the Named State Broadcasters Association.

<sup>7</sup> AT&T Inc. filed separate ex parte filings on April 19, 2007 and April, 23, 2007, respectively.

10. Pinellas County Emergency Communications Department
11. Pittman Broadcasting Services, LLC
12. Pulver.com
13. Rosum Corporation
14. State of New York Department of Public Service, New Jersey Board of Public Utilities, Connecticut Department of Public Utility Control, Center for Technology in Government at the University of Albany, National Communications System and the National Coordinating Center.
15. New York State Department of Public Service, the Connecticut Department of Public Utility Control, the Center for Technology in Government at the University of Albany, New York Emergency Management Office, New York Office of Cyber Security and Critical Infrastructure, New York Office of Homeland Security, ChicagoFIRST, AT&T Communications of NY, Inc., and Sprint Nextel Corporation.
16. United Telecom Council
17. USA Mobility
18. Verizon<sup>9</sup>

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(...continued from previous page)

<sup>8</sup> NTI Group filed a total of five separate ex parte filings. NTI Group filed separate filings on October 30, 2006, May 21, 2007 and May 23, 2007, respectively; and NTI Group filed two separate filings on May 24, 2007.

<sup>9</sup> Verizon filed two separate ex parte filings on April 30, 2007.

**APPENDIX B****Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission creates new Part 12 of Chapter I of Title 47 of the Code of Federal Regulations (C.F.R.) as follows:

**PART 12 – REDUNDANCY OF COMMUNICATIONS SYSTEMS****12.1 Purpose.****12.2 Backup Power.****12.3 911 and E911 Analyses and Reports**

**Authority:** Sections 1, 4(i), 4(j), 4(o), 5(c), 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 154(o), 155(c), 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 621(b)(3), and 621(d), unless otherwise noted.

**§ 12.1 Purpose.**

These rules include requirements that will help ensure the resiliency, redundancy and reliability of communications systems, particularly 911 and E911 networks and/or systems.

**§ 12.2 Backup Power.**

Local exchange carriers (LECs), including incumbent LECS (ILECs) and competitive LECs (CLECs), and commercial mobile radio service (CMRS) providers must have an emergency backup power source for all assets that are normally powered from local AC commercial power, including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. LECs and CMRS providers should maintain emergency back-up power for a minimum of 24 hours for assets inside central offices and eight hours for cell sites, remote switches and digital loop carrier system remote terminals that



are normally powered from local AC commercial power. LECs that meet the definition of a Class B company as set forth in Section 32.11(b)(2) of the Commission's rules and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from this rule.

### **§ 12.3 911 and E911 Analyses and Reports.**

The following entities must analyze their 911 and E911 networks and/or systems and provide a detailed report to the Commission on the redundancy, resiliency, and reliability of those networks and/or systems: (1) local exchange carriers (LECs), including incumbent LECs (ILECS) and competitive LECs (CLECs); (2) commercial mobile radio service providers required to comply with the wireless 911 rules set forth in Section 20.18 of the Commission's rules; and (3) interconnected Voice over Internet Protocol (VoIP) service providers. LECs that meet the definition of a Class B company set forth in Section 32.11(b)(2) of the Commission's rules, non-nationwide commercial mobile radio service providers with no more than 500,000 subscribers at the end of 2001, and interconnected VoIP service providers with annual revenues below the revenue threshold established pursuant to Section 32.11 of the Commission's rules are exempt from this rule.

(a) The Public Safety and Homeland Security Bureau (PSHSB) has the delegated authority to implement and activate a process through which these reports will be submitted, including the authority to establish the specific data that will be required. Where relevant, these reports should include descriptions of the steps the service providers intend to take to ensure diversity and dependability in their 911 and E911 networks and/or systems, including any plans they have to migrate those networks and/or systems to a next generation Internet Protocol-based E911 platform.

(b) These reports are due 120 days from the date that the Commission or its staff announces activation of the 911 network and system reporting process.

(c) Reports filed under this Part will be presumed to be confidential. These reports will be shared with The National Emergency Number Association, The Association of Public Safety Communications Officials, and The National Association of State 9-1-1 Administrators only pursuant to a protective order. PSHSB has the delegated authority to issue such protective orders. All other access to these reports must

be sought pursuant to procedures set forth in 47 C.F.R. § 0.461. Notice of any requests for inspection of these reports will be provided to the filers of the reports pursuant to 47 C.F.R. § 0.461(d)(3).

## APPENDIX C

### Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*Notice*) in EB Docket No. 06-119.<sup>2</sup> The Commission sought written public comment on the proposals in this docket, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

#### A. Need for, and Objectives of, the Rules

2. In this Order, we adopt a rule that requires local exchange carriers (LECs), other than those that meet the definition of a Class B company as set forth in Section 32.11(b)(2) of the Commission's rules,<sup>4</sup> and commercial mobile radio service (CMRS) providers, other than non-nationwide CMRS providers with no more than 500,000 subscribers, to have an emergency backup power source for all assets that are normally powered from local AC commercial power, including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. We also adopt a rule that requires the analysis of 911 and E911 networks and systems and detailed reporting to the Commission of the redundancy, resiliency and reliability of those networks and systems by: (1) LECs, including incumbent LECs (ILECs) and competitive LECs (CLECs); (2) commercial wireless service providers required to comply with the wireless 911 rules set forth in Section 20.18 of the Commission's rules;<sup>5</sup> and (3) interconnected Voice over Internet Protocol (VoIP) service providers. LECs that meet the definition of a Class B company set forth in Section 32.11(b)(2) of the Commission's rules, non-nationwide commercial mobile radio service providers with no more than 500,000 subscribers at the end of 2001, and interconnected VoIP service providers with annual revenues below the revenue threshold established pursuant to Section 32.11 of the Commission's rules are exempt from this rule.

3. These rules, which are part of a broader initiative taken with this Order to implement several of the recommendations made by the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (Katrina Panel), will promote communications readiness and preparedness for future natural disasters and other emergencies. The measures taken today will also facilitate more effective and efficient recovery efforts in the wake of such events. These actions will advance efforts to save lives and protect property in the event of a natural disaster or other emergency.

#### B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. No comments specifically addressed the IRFA.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Notice of Proposed Rulemaking*, 21 FCC Rcd 7320, 7330, Appendix A. (2006).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> Section 32.11 provides that Class B companies are those companies that have annual revenues from regulated telecommunications operations that are less than the indexed revenue threshold. 47 C.F.R. § 32.11(b)(2). The Wireline Competition Bureau recently announced that the 2006 revenue threshold for Class A to Class B companies is \$134 million. *Public Notice*, "Annual Adjustment of Revenue Thresholds," DA 07-1706 (WCB, April 12, 2007). Although Section 32.11, by its terms, applies only to ILECs, we are applying the same revenue categories to CLECs for the purpose of the exception to this requirement.

<sup>5</sup> 47 C.F.R. § 20.18.

**C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>8</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>9</sup>

6. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.<sup>10</sup> A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>11</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>12</sup> The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>13</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>14</sup> We estimate that, of this total, 84,317 entities were “small governmental jurisdictions.”<sup>15</sup> Thus, we estimate that most governmental jurisdictions are small.

7. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by the rules the Commission adopts in this Order. The rule changes affect LECs, including both incumbent LECs (ILECS) and competitive LECs (CLECs), CMRS providers, and interconnected VoIP service providers.

8. Since this Order applies to multiple services, this FRFA analyzes the number of small entities affected on a service-by-service basis. In the case of CMRS providers, when identifying small entities that could be affected by the Commission’s new rules, this FRFA provides information that describes auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission

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<sup>6</sup> 5 U.S.C. § 604(a)(3).

<sup>7</sup> 5 U.S.C. § 601(6).

<sup>8</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>9</sup> 15 U.S.C. § 632.

<sup>10</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

<sup>11</sup> 5 U.S.C. § 601(4).

<sup>12</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>13</sup> 5 U.S.C. § 601(5).

<sup>14</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

<sup>15</sup> We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

9. Cellular Licensees. The SBA has developed a small business size standard for small businesses in the category “Cellular and Other Wireless Telecommunications.”<sup>16</sup> Under that SBA category, a business is small if it has 1,500 or fewer employees.<sup>17</sup> For the census category of “Cellular and Other Wireless Telecommunications,” Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>18</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>19</sup> Thus, under this category and size standard, the majority of firms can be considered small.

10. Broadband Personal Communications Service. The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>20</sup> For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>21</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>22</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>23</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>24</sup> On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35.<sup>25</sup> Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

<sup>16</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212.

<sup>17</sup> *Id.*

<sup>18</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>19</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>20</sup> See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996); see also 47 C.F.R. § 24.720(b).

<sup>21</sup> See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852 ¶ 60.

<sup>22</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>23</sup> FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. January 14, 1997).

<sup>24</sup> See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>25</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

11. Specialized Mobile Radio. The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>26</sup> The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>27</sup> The SBA has approved these small business size standards for the 900 MHz Service.<sup>28</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>29</sup> A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>30</sup>

12. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed “small business” status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

13. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$3 million or \$15 million (the special small business size standards), or have no more than 1,500 employees (the generic SBA standard for wireless entities, discussed, *supra*). One firm has over \$15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

14. Advanced Wireless Services. In the *AWS-1 Report and Order*, the Commission adopted rules that affect applicants who wish to provide service in the 1710-1755 MHz and 2110-2155 MHz bands.<sup>31</sup> The *AWS-1 Report and Order* defines a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The *AWS-1*

<sup>26</sup> 47 C.F.R. § 90.814(b)(1).

<sup>27</sup> *Id.*

<sup>28</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. The Commission notes that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

<sup>29</sup> See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

<sup>30</sup> See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>31</sup> Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003) (*AWS-1 Report and Order*).

*Report and Order* also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

15. *Incumbent Local Exchange Carriers (Incumbent LECs).* As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>32</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>33</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>34</sup> According to Commission data,<sup>35</sup> 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed rules.

16. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>36</sup> According to Commission data,<sup>37</sup> 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are “Shared-Tenant Service Providers,” and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are “Other Local Service Providers.” Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our proposed rules.

17. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not

<sup>32</sup> 15 U.S.C. § 632.

<sup>33</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

<sup>34</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>35</sup> *Trends in Telephone Service*, Table 5.3.

<sup>36</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>37</sup> *Trends in Telephone Service*, Table 5.3.

generally originate programming material.”<sup>38</sup> The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts.<sup>39</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.<sup>40</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>41</sup> Thus, under this size standard, the majority of firms can be considered small.

18. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.<sup>42</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>43</sup> In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.<sup>44</sup> Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.<sup>45</sup> Thus, under this second size standard, most cable systems are small.

19. Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>46</sup> The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>47</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>48</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated

<sup>38</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517510 Cable and Other Program Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>39</sup> 13 C.F.R. § 121.201, NAICS code 517510.

<sup>40</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

<sup>41</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>42</sup> 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

<sup>43</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

<sup>44</sup> 47 C.F.R. § 76.901(c).

<sup>45</sup> Warren Communications News, *Television & Cable Factbook 2006*, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

<sup>46</sup> 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

<sup>47</sup> 47 C.F.R. § 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

<sup>48</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.



with entities whose gross annual revenues exceed \$250 million,<sup>49</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

20. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity."<sup>50</sup> Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.<sup>51</sup> According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.<sup>52</sup> Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24, 999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

21. *Web Search Portals.* Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that "operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users."<sup>53</sup> The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.<sup>54</sup> According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year.<sup>55</sup> Of these, 303 had annual receipts of under \$5 million, and an additional 15 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

22. *911 System Information Collection.* The rules adopted in this Order require certain specified communications providers to analyze their 911 and E911 networks and systems and provide one-time detailed reports to the Commission regarding the redundancy, resiliency and reliability of those networks and systems. The communications providers subject to this rule are: (1) LECs, including ILECs and CLECs; (2) commercial wireless service providers required to comply with the wireless 911 rules set forth in Section 20.18 of the Commission's rules; and (3) interconnected Voice over Internet Protocol

<sup>49</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

<sup>50</sup> U.S. Census Bureau, "2002 NAICS Definitions: 518111 Internet Service Providers"; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

<sup>51</sup> 13 C.F.R. § 121.201, NAICS code 518111.

<sup>52</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518111 (issued Nov. 2005).

<sup>53</sup> U.S. Census Bureau, "2002 NAICS Definitions: 518112 Web Search Portals"; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

<sup>54</sup> 13 C.F.R. § 121.201, NAICS code 518112.

<sup>55</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518112 (issued Nov. 2005).

(VoIP) service providers. The Commission has delegated to the Chief, Public Safety and Homeland Security Bureau, the authority to implement and activate a process through which these reports will be submitted, including the authority to establish the specific data that will be required.

23. The reports required by this Order will be filed one time only and are due 120 days from the date that the Commission or its staff announces activation of the 911 network and system reporting process. Since most companies can be expected to have knowledge of their network and/or system architecture, we estimate that for the great majority of entities the total time required to complete a filing with the Commission will be approximately eight to 24 hours, depending on the size and type of entity. In making our time estimate, we have taken into account that this report must be filed only once and that the report will likely be made electronically, through a "fill in the blank" template, thereby minimizing the burden on all reporting entities. Finally, in order to avoid imposing financial burden on small carriers, the Commission exempt the following from this rule: (1) LECs that meet the definition of a Class B company set forth in Section 32.11(b)(2) of the Commission's rules;<sup>56</sup> (2) non-nationwide commercial mobile radio service providers with no more than 500,000 subscribers at the end of 2001; and (3) interconnected VoIP service providers with annual revenues below the revenue threshold established pursuant to Section 32.11 of the Commission's rules.

24. *Back-Up Power Supply.* The Order also adopts a rule that requires LECs and CMRS providers to have an emergency back-up power source for all assets that are normally powered from local AC commercial power, including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. The rule adopted provides that LECs and CMRS providers should maintain emergency back-up power for a minimum of 24 hours for assets inside central offices and eight hours for cell sites, remote switches and digital loop carrier system remote terminals that normally are powered from local AC commercial power. Our expectation is that this requirement will not create an undue burden since several communications providers reported in their comments that they already maintain emergency back-up power. Additionally, LECs that meet the definition of a Class B company as set forth in Section 32.11(b)(2) of the Commission's rules and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from this rule.

#### **E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>57</sup>

26. *911 System Information Collection.* In order to minimize any adverse impact of the 911 system information collection on small entities, we have exempted LECs (both ILECs and CLECs) that meet the definition of a Class B company that is set forth in Section 32.11(b)(2) of the Commission's

<sup>56</sup> Section 32.11 provides that Class B companies are those companies that have annual revenues from regulated telecommunications operations that are less than the indexed revenue threshold. 47 C.F.R. § 32.11(b)(2). The Wireline Competition Bureau recently announced that the 2006 revenue threshold for Class A to Class B companies is \$134 million. *Public Notice*, "Annual Adjustment of Revenue Thresholds," DA 07-1706 (WCB, April 12, 2007). Although Section 32.11, by its terms, applies only to ILECs, we are applying the same revenue categories to CLECs for the purpose of the exception to this requirement.

<sup>57</sup> 5 U.S.C. § 603(c).